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ABSTRACT

Educators' legal duties and school board liability in reporting suspected child abuse are discussed in this policy bulletin. Information is provided on educators' responsibilities in reporting abuse perpetrated in the home or school, school board liability resulting from failure to report as a violation of abuse victims' constitutional rights, and school board precautions against allegations of abuse or negligence. Recommendations include provision of inservice education for school personnel, creation of awareness of child abuse symptoms and the vulnerability of school personnel to charges, and the promotion of cautious relationships with students. The legal obligation to report suspicions of child abuse is stressed. (21 references) (LMI)

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Educators and Child Abuse[1]

Martha McCarthy

Reported cases of child abuse—acts of commission or omission that harm children—have steadily increased in recent years.[2] In Indiana alone, over 30,000 cases of child abuse were reported in 1988 (Indiana Department of Public Welfare, 1988). All states have enacted laws that impose legal penalties against persons who fail to make a report if they have knowledge that would cause individuals of similar background and training to believe that child abuse has occurred. For example, Indiana law stipulates that a person who has reason to believe that a child is a victim of abuse or neglect and fails to make a report is guilty of a Class B misdemeanor with penalties of up to 180 days imprisonment and $1,000 in fines (IC 31-6-11-3, 31-6-11-20, 35-50-3-3).

Educators' Legal Duties

In the school context, when abuse is suspected (based on information from the alleged victim, other students, etc.), teachers and administrators have a legal duty to make a report without delay. Certainty that abuse has occurred is not required. Too often abuse is reported only after the child has suffered substantial harm; educators are legally obligated to report their *suspicions* of abuse.

State laws outline the reporting procedures that must be followed. In Indiana, for example, a teacher must contact the principal, who has the duty to make an oral report immediately to either the local child protection service of the county department of public welfare or to the county law enforcement agency (IC 31-6-11-3, 31-6-11-20). The agency is obligated to issue a preliminary report regarding its handling of the case to the principal within 30 days and a full report within 90 days of receiving notice of the alleged abuse.

The majority of child maltreatment cases involve abuse inflicted by family members or others who have contact with the child during nonschool hours; such abuse may be difficult for educators to detect. Penalties have seldom been imposed on educators for failure to report their suspicions of abuse inflicted by nonschool personnel.

While most perpetrators in child abuse cases have no connection with the school, claims against school employees for alleged sexual misconduct with students are increasing. Such cases have generated a substantial amount of negative publicity for the schools involved. Also, they have raised questions regarding the liability of educators and school boards for failure to protect students from abuse inflicted by school employees. Since educators have a legal duty to supervise students and ensure their safety while at school, parents have the expectation that their children will be protected from abuse during school hours.

There were no reported cases of prosecution of school personnel for failure to report suspected child abuse until the 1980s (U.S. Department of Health, Education, and Welfare, 1980). In a number of recent cases, however, educators have been charged with failure to report suspected incidents of abuse where the alleged perpetrators were school employees. For example, in 1987 an Indiana circuit court found a superintendent guilty of failure to report an incident of alleged child abuse involving sexual improprieties between a school bus driver and a student (*State of Indiana* v. *Slusher*, 1987). The court concluded that the superintendent had reason to believe that the abuse had occurred and thus was subject to a fine under Indiana law. Even though the bus driver was subsequently cleared of the abuse charges, the superintendent was not relieved of his legal duty to report the *suspected* abuse. In a similar North Carolina case, an assistant superintendent was convicted of a misdemeanor and fined $100 under state law for not reporting his suspicions that a substitute teacher had engaged in child abuse (*State* v. *Freitag*, 1986).

Ignorance of the law is no defense for failure to report suspected child abuse; unfamiliarity with statutory requirements can result in liability. Moreover, individuals need not fear legal repercussions if they report suspicions that later are found to be ungrounded. Most states confer immunity on individuals who report suspected abuse in

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good faith. Courts have rejected defamation suits brought against educators by those accused of child abuse, even though actual abuse was not established (*Krikorian* v. *Barry*, 1987; *McDonald* v. *State of Oregon*, 1985; Shoop & Firestone, 1988). As long as educators have reason to believe that abuse has taken place, they are protected against defamation suits.

Educators cannot assert that protection of a student's confidential revelations justifies a delay in reporting suspected abuse. Most states waive the privilege of confidentiality between professionals and their clients in situations involving child abuse. The Indiana statute, for example, stipulates that professional privilege is not a justification for failure to report suspected abuse (IC 31-6-11-8).

In 1987 the Seventh Circuit Court of Appeals upheld the suspension of an Illinois teacher/school psychologist for his delay in reporting the alleged sexual abuse of a student by another teacher (*Pesce* v. *J. Sterling Morton High School District*, 1987). The psychologist had been counseling the student in question, and the court reasoned that he had a duty to report his knowledge of suspected abuse to the Department of Children and Family Services. The court was not persuaded that the suspension of the teacher/psychologist violated his due process rights or his right to confidentiality in disclosing information received from a student.

Some cases of child abuse by school employees have occurred off school grounds, but the locale of the incident does not reduce educators' legal obligations to report their suspicions (*Pesce* v. *J. Sterling Morton High School District*, 1987; *Sowers* v. *Bradford Area School District*, 1988). Educators are not liable for failure to report such off-campus abuse, however, if they had no reason to suspect that the abuse was occurring. In a Michigan case, for example, a seventh grade student was molested by a teacher at the teacher's home during the summer, and the principal had no knowledge of the abuse until the teacher was arrested. Accordingly, the principal was not found liable for failure to make a report (*Rosacrans* v. *Kingon*, 1986).

School Board Liability

In addition to the imposition of penalties against individuals for failure to report suspected child abuse, several courts have addressed the potential liability of school boards. In a California case, a state appeals court ruled that a school district could be held liable under state law for a teacher's sexual molestation of a five-year-old student (*Kimberly M.* v. *Los Angeles Unified School District*, 1987). Noting that the school board has a duty to ensure safe and adequate supervision of all students, the court concluded that the board is legally responsible when teachers fail to fulfill their caretaking function.

An issue that is receiving substantial current attention is whether a public agency's failure to report child abuse or to protect children from suspected harm can abridge constitutional rights of abuse victims. In some cases, plaintiffs have sought damages under the Civil Rights Act of 1871, Section 1983, contending that a school board's failure to report suspected abuse or to protect a child from known perpetrators abridges the child's liberty rights under the fourteenth amendment. Section 1983 provides a remedy in monetary damages to the injured party where persons acting under color of state law abridge federally protected rights. The term "person" has been broadly interpreted to include the state's political subdivisions, such as municipalities and school boards (*Monell* v. *Department of Social Services of the City of New York*, 1978). For example, the Second Circuit Court of Appeals found a city agency liable for failing to properly supervise the placement of a child where there was evidence that the foster father was abusing the child. Noting that the agency's failure to report suspected abuse could be considered the proximate cause of the child's subsequent injuries and that the agency was deliberately indifferent toward the child's welfare, the court found a Section 1983 violation and approved the jury's award of $225,000 in damages assessed against the agency (*Doe* v. *New York City Department of Social Services*, 1982).

In the school context, a Missouri federal district court held that if a school board has general awareness of alleged sexual misconduct by a teacher and fails to report or investigate the incidents, the board can be held liable for damages under Section 1983 (*Thelma D.* v. *Board of Education of City of St. Louis*, 1987). However, in another Missouri case, the school district was not found liable for a bus driver's sexual abuse of students since there was no evidence that the district had engaged in a pattern of ignoring or failing to act on complaints regarding the bus driver's misconduct (*Jane Doe "A"* v. *Special School District of St. Louis County*, 1988).

A decision recently rendered by the United States Supreme Court, although involving a county department of social services rather that a school board, may have implications for school boards' responsibilities in connection with suspected child abuse. The Supreme Court affirmed the conclusion of the Seventh Circuit Court of Appeals that the county department of social services was not liable for a father's brutalities that finally resulted in permanent brain damage to his child (*DeShaney* v. *Winnebago County Department of Social Services*, 1989).

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Recognizing that the agency had sufficient evidence that the father was abusive, the Supreme Court nonetheless concluded that the agency had not deprived the child of a constitutional right merely by failing to protect him from his father's beatings. The Court noted that the fourteenth amendment's due process clause places a limitation on the state's power to act, but does not place an affirmative obligation on the state to guarantee individuals a minimal level of safety and security from private harm. While acknowledging the state's special duty to protect individuals that have been imprisoned or institutionalized through acts of the state, the Court emphasized that the child in this case was harmed while he was in the custody of his father, not the state. Rejecting the constitutional claim, the Court did note, however, that where a state agency voluntarily undertakes to protect a child and breaches this assumed common law duty by failing to exercise reasonable care, it can be sued for damages in a state tort action.

While the Court in *DeShaney* denied constitutional protection under the due process clause for abuse committed by private individuals when the victim is not in state custody, this holding does not foreclose a similar successful suit for abuse occurring while a student is in the custody of school personnel and subject to compulsory school attendance. The Court noted that the due process clause may be triggered when the state, "by the affirmative acts of its agents, subjects an involuntarily confined individual to deprivations of liberty which are not among those generally authorized by his confinement" (p. 1006, n. 8). Thus, the *DeShaney* case has left the door open for Section 1983 liability to be assessed where school personnel suspect that a child is being abused at school and fail to act to protect the child from harm.

In a Pennsylvania case that is still being litigated, a high school band member is seeking damages under Section 1983 against the school district, principal, assistant principal, and superintendent for injuries arising out of the band director's sexual assaults. The band director, who resigned from his job, subsequently pled guilty to criminal charges of indecent assault. Regarding the Section 1983 claim against the school district and various administrators, the federal district court and Third Circuit Court of Appeals rejected the defendants' request for summary judgment. The appellate court reasoned that a trial was warranted by evidence of the school district's general practice of failing to investigate suspected sexual abuse and the student plaintiff's well-established constitutional right to remain free from threats, sexual abuse, and sexual harassment by the band director (*Stoneking* v. *Bradford Area School District*, 1988). The appeals court further recognized that the school district, superintendent, and principals have a special relationship to students which creates an affirmative duty to protect students from assaults by teachers. The Supreme Court, however, recently vacated the appellate court's decision and remanded the case for further consideration in light of the *DeShaney* ruling. The Supreme Court's order, of course, does not preclude the appeals court from reinstating its original order based on the factual distinctions between this case and *DeShaney*.

School Board Precautions

Given the increased public concern about child abuse, some school boards are taking bold action to guard against allegations of abuse involving school personnel. Richard Miller, Executive Director of the American Association of School Administrators (AASA), has observed that while the number of cases of abuse by school employees is small compared with the total incidence of child abuse, "even one case is serious" and educators "are interested in hitting this problem head-on" (Hume, 1987, p. 6). Some school districts have enacted policies that prohibit any physical contact between teachers and students (including corporal punishment and touching to comfort a child). Other school districts have adopted policies requiring background checks of all school employees. Both AASA and the National Association of State Boards of Education have endorsed mandatory background checks for school employees to ensure that individuals who have been convicted of child abuse or sex offenses are not placed in positions where they will have regular contact with students (Hume, 1987).

There is some apprehension that the current public sensitivity to child abuse may lead to unsubstantiated allegations involving educators. If a school employee is the accused perpetrator, such allegations will damage the individual's reputation, even if the charges are subsequently found to be false. Also, the threat of negative publicity associated with charges of abuse involving school employees may cause some school boards to impose unnecessary restraints on the activities of educators.

Perhaps greater attention to inservice education for school personnel might reduce the need for more extreme measures. Teachers should be informed of their statutory duties and receive training in how to identify and report suspected child abuse. Recent studies indicate that teachers are not very knowledgeable about the symptoms of abuse, particularly sexual abuse. Most educators do not even know that they have a duty to report suspected abuse (Levin, 1983; Shoop & Firestone, 1988). Shoop and Firestone (1988) have recommended that knowledge of child abuse (e.g., symptoms and reporting procedures) should be included in precertification testing programs.

Not only do educators need to be able to recognize symptoms of abuse and be knowledgeable regarding their legal obligation to report suspected abuse, but more importantly, school personnel need to be aware of their vulnerability to child abuse charges. They should be cautious in their relationships with students to avoid situations that may give rise to allegations that they are engaging in inappropriate behavior.

Notes

1. This paper builds on McCarthy, M. (1988). Child abuse and school personnel. *The Indiana Principal, 13*(1), 11-32. The author wishes to thank John Dayton and Milton Hill, law students at Indiana University, for their assistance in locating citations and reviewing drafts of this paper.

2. For an overview of child maltreatment nationally and in Indiana, see Hart, S., & Maxson, S. (1988). *Child maltreatment: Responsibilities and responses of the schools.* Bloomington, IN: Consortium on Educational Policy Studies.

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